THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.NO. 350 OF 2006

Date: 06-11-2007

Between :

B.Subba Reddy,
S/o:B.Krishna Reddy,
Aged about 45 years,
R/o: 1101, Srider Lane,
Silver Spring, MD 20905, USA
Rep. By its GPA Ch.Venkat Ram Reddy …Petitioner

A N D

1. Appellate Authority for Industrial and
Financial Reconstruction under the Sick Industrial Companies
(Special Provisions) Act, 1985 and others

…Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.NO. 350 OF 2006

ORDER:

1. Sri B.Subba Reddy, represented by his General Power of Attorney Holder filed the present writ petition for writ of certiorari to quash the order of the first respondent-appellate authority for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985, New Delhi in an appeal No. 48 of 2005, dated 28-12-2005 and consequently allow the appeal of the petitioner as prayed for and to grant such other suitable relief.

2. Heard Sri Vedula Venkata Ramana learned counsel representing the petitioner and A. Raja Sekhar Reddy, learned Additional Solicitor General, Smt. M.Lakshmi Kumar, Shri P.Vikram representing Sri K.Kodanda Ram, Sri K.Gopalakrishna Murthy, Sri V.V.S.N.Raju, the learned counsel representing the respective respondents.

3. At the outset it can be stated that the serious contest appears to be between the petitioner Sri B. Subba Reddy and the 6th respondent Sri V.N.Sunanda Reddy, Managing Director, M/s S.S. Organics Limited, Aroor Village, Sadasivapet Mandal, Medak District

4. This Court issued Rule nisi on 6-1-2006. This Court also dismissed WPMP Nos. 427 of 2006 and 428 of 2006 on 2-3-2006 as the learned counsel for the petitioner has not pressed the said applications. However, in WPMP Nos. 1355 of 2006 and 1356 of 2006 on 2-3-2006 this Court made the following order:

> "There is no dispute that when a reference before Board for Industrial and Financial Reconstruction (BIFR) was pending, sixth respondent agreed, as part of modified rehabilitation scheme, to take twenty five lakhs (25,00,000) shares at Rs.10/- (Rupees ten only) each by converting unsecured loans brought in by him. The Board of Directors of the third respondent accordingly allotted said quantity to sixth respondent. However, on appeal by the petitioner before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), an interim order was passed staying the conversion of

unsecured loans into equity shares. The third respondent did not give effect to the allotment made in favour of the sixth respondent. However, after dismissal of the appeal by AAIFR on 28-5-2005, the third respondent addressed Bombay Stock Exchange (BSE) that they are giving effect to the decision of the Board of Directors, dated 28-3-2005 pursuant to the orders of BIFR for allotment of twenty five lakhs (25,00,000/-) shares to sixth respondent.

It is now the case of the petitioner that if the sixth respondent transfers his shares to third parties in the present system of Demat holding, it would be very difficult to get back the shares in the event of Writ Petition being allowed by this Court. Therefore, the learned counsel prays for an interim order directing the third respondent not to trade, or create third party interest in respect of the shares already allotted to sixth respondent.

Though initially learned counsel for respondents 3 and 6 opposed the said prayer, the learned counsel submits that during the pendency of the Writ Petition sixth respondent shall not transfer the shares to third parties. The same is recorded.

The W.P.M.Ps. are accordingly disposed of.

Post the Writ Petition for final hearing on 12-6-2006.".

5. Sri Vedula Venkata Ramana, learned counsel representing the writ petitioner would maintain that though several grounds had been raised, the first respondent-appellate authority had not considered the said grounds in proper perspective, except making some modifications without considering the other important or essential aspects and negatived and hence the order impugned is not sustainable and at any rate the matter requires reconsideration at the hands of the appellate authority. Learned counsel while making elaborate submissions had taken this Court through the historical background of the litigation and drawn the attention of this Court to the respective pleadings of the parties and also the relevant material papers placed before this Court. Learned counsel would submit that certain civil suits have been filed and certain proceedings are pending before the Company Law Board. The counsel also while making elaborate submissions had pointed out to the proceeding before the Company Law Board. The modify scheme the way in which the matter has been dealt with. The counsel also would point out that the other litigations being irrelevant the appellate

authority should also decided all the grounds raised before him and the matter would go to show that there is non-application of mind by the appellate authority. The learned counsel also would submit even BIFR had taken a decision without affording any opportunity to the petitioner and the present petitioner the appellant in the appeal before the appellate authority was not made him party before the BIFR. The Proceedings of the BIFR themselves are not in conformity with the procedure laid down by the Act in question. The Sick Industrial Company Special Provision Act, 1985 (herein after referred to in short as 'the Act for the purpose of convenience). The learned counsel also drawn the attention of this Court to Section 18 of the said Act dealing with preparation and sanction of the schemes and in particular laid emphasis on Section 18(5) of the Act. The counsel also pointed out to Section 25 of the Act dealing with appeal. The learned counsel also while further elaborating his submission had drawn the attention of this Court to the relevant BIFR Reservations, 1987 (hereinafter referred in short as "the resolution" for the purpose of convenience) in particular Chapter VI the procedure for preparation and sanction of the scheme under Sectin18 of the Act, the Regulations 27 to 33 in particular. The learned counsel would submit that several of the factual controversy between the parties may not be effectively adjudicated by a Writ Court since the present writ petition is a writ of certiorari questioning the order of the first respondent-appellate authority made in Appeal NO. 48 of 2005 dated 28-12-2005. However, while elaborating his submission the learned counsel pointed out paras 10 to 15 of the impugned order and submits that at any rate this is the ground raised by the writ petitioner-appellant had not been considered in proper perspective. It is fit case where impugned order to be quashed and the matter to be remitted to the appellate authority to reconsider all the aspects. Learned counsel also further contended that when the rehabilitation scheme had been originally sanctioned on12-2-2002 which require commercial of Rs.200 lakhs worth unsecured loan into equity to the credit of promoters, their relatives and friends and when the said scheme was declared failed by order dated 19-6-2003 steps taken and invented in the interregnum including the version of unsecured loans should fall to the ground, in view of the fact that when scheme had been declared as failed the shareholder pattern of the company shall reconstitute to the original condition as it is stood the sanction of the

scheme on 12-2-2002. The learned counsel would also maintain that the 6th respondent though not founder Director of the company purposely by accepting rehabilitation scheme dated 12-2-2002 had manipulated share holding of the company, dated 27-2-2003 and board meeting dated 25-2-2003 and in fact fabricated some book entries unsecured loans to his advantage and subsequently thereto removed the petitioner from the Directorship of the company. The learned counsel also would pointed out that the petitioner made an attempt to agitate before the Company Law Board and also to the appellate authority about the misinterpretation given to illustrative scheme, dated 12-2-2002 and on 27-1-2005 and also about so called allotment as per extra ordinary general meeting dated 27-2-2003 and the Board Meeting dated 25-3-2003. But, it is unfortunate that the Company Law Board had taken a view and it is the appellate authority which has jurisdiction to decide the matter and by the present impugned order the first respondent found that it is for the company Law Board alone who has jurisdiction to decide the controversy. The learned counsel while elaborating his submission would maintain that the counsel is unable to understand though the first respondent appellate authority had concluded that it has no jurisdiction to go into correctness or otherwise, of failed schemed. Learned counsel also pointed out to the order relating to a conversion granted during the pendency of the appeal, the foul played which is being played by the sixth respondent which is being high lighted. Several factual aspects have been narrated by the learned counsel clearly pointing out several of the proceedings in this regard. The learned counsel would maintain that this is a fit case where certiorari jurisdiction to be exercised by this Court under Article 226 of the Constitution of India. Learned Counsel also placed reliance on certain decisions.

6. Learned counsel representing 4th respondent had taken to the contents of the counter affidavit and made certain submission in support of the impugned order. It appears Respondents NO. 3 and 6 had not filed affidavit in the main writ petition, but appears to have filed counter affidavit in WPMPs as specified supra. It may be pointed out that it would be always desirable if the parties filed specific counter affidavits in the writ petition.

7. The counsel representing Respondents No.1 to 3 and 5 also made certain submissions in support of the impugned order.

8. Sri P. Vikram representing Sri M.Kodanda Ram representing 6th respondent with all emphasis would submit that in the light of the facts and circumstances and also in the light of the scope and ambit and also the jurisdiction of the company Law Board, Additional Principal Bench at Chennai , the order impugned cannot be found fault. Learned counsel also pointed out to the historical background of the litigation and also how in the interest of the company the steps had been taken. The counsel also pointed out to the scheme by BIFR and two schemes for the revival and modify the scheme and how the scheme became a debt free company. The counsel also would maintain that there is no individual share holder the BIFR perfectly followed the procedure, the petitioner having slept over his rights may be out of personal animosity in view of the relationship between the parties has been unnecessarily agitating. The counsel pointed out the grounds raised before the AAIFR and would maintain that except certain factual controversy no procedural irregularities as such had been raised even in the writ petition. The learned counsel pointed out to Section 18(5) to (9) of the Act and also regulations referred to the supra and explained different proceedings and also further explained that the powers of AAIFR being limited while dealing with appeals the appellate authority is well justified in making the said order and absolutely, there is no legal infirmities. The learned counsel also explained under what circumstances such interim order had been made on consortium made by the counsel and would conclude that the stand taken by the writ petitioner not being bona fide, even otherwise, in view of the limitations imposed in exercising certiorari jurisdiction this is not a fit case to be interfered with. Learned counsel placed strong reliance on certain decisions in support of his submissions.

9. Heard learned counsels.

10. Before taking up further discussion, it may be appropriate to have a glance at the relevant findings recorded by the first respondent at paras 10 to 15 which are as follows:

> "10. The appellant has also filed a petition u/s 111A, 163, 196,237(b),397,398, 402, 403, 406,408 and Schedule XI of the Companies Act, 1956 before the Company Law Board. Addl. Principal Bench, Chennai. In this petition the appellant had sought several relieves namely a) set aside the allotment of 20 lakh shares allotted on 25-4-2003 in pursuance of SS (02) ; (b)

freeze the voting rights in respect of 20 lakhs shares allotted on 25-4-2003 in favour of respondent Shri V.N. Sunanda Reddy and associates;(c) restrain the respondent, MR. V.N. Sunanda Reddy and his associates from transferring/encumbering/ pledging/ creating third party interesting respect of 20 lakh shares; (d) to appoint an independent Chartered Accountant to verify the documents, minute books etc., relating to allotment of 20 lakh shares and (d) issue of a direction to the respondent Mr. V.N. Sunanda Reddy and his associates not to alienate in any manner any of the movable and immovable properties of SSOL and not to create any further encumbrances on the property.

11. The appellant is before this Authority with regard to allotment of Rs. 250 lakh worth of shares made on 28-3-2005 in pursuance of SS (05) in favour of the respondent and his associates. The issue of Rs.200 lakh worth of shares made on 25-4-2003 in pursuance of SS 02 is under adjudication by the Company Law Board, which has already heard arguments on the maintainability of the petition.

12. It is seen that during the course of implementation of the earlier scheme i.e. SS-02 which was subsequently declared failed mid-way as well as in terms of SS-05, the respondent Shri V.N. Sunanda Reddy has acquired nearly 80% of the shares of the company and is more or less in total control. We also find on going through the records that the dues of the secured creditors have been fully settled. Having regard to these set off acts continuation of the obligation of Shri B. Subba Reddy, in our view, does not appear either necessary or fair. We thus allow the appellant's prayer qua clause 6.3.(v) and in terms of section 25 of SICA and direct that clause (f) and (g) therein should be deleted. We also direct that clause (j) therein may read as follows:-

The company/respondent who is a majority shareholder and also the Managing Director agreed to pay any contingent liability arising hereafter on account of statutory dues/pressing creditors/disputed dues either out of internal accruals or own contribution.

13. In the event of the appellant in this case getting a decision in his favour from the Company Law Board (Principal Bench, Chennai) or any higher court qua the allocation of shares under SS-02 or SS-05, he shall have the liberty to approach the BIFR for a suitable/appropriate amendment in the sanctioned scheme.

> 14. The legality of the allotment of shares qua SS(02) is now under adjudication before the Company Law Board, Additional Principal Bench, Chennai. However, the fact remains that a sum of Rs. 200lacs qua SS (02) and Rs.250 lacs qua SS (05) sanctioned by the impugned order dated 27-1-2005 has been brought in by the respondent Mr. V.N. Sunanda Reddy as unsecured loan. The legality or otherwise in the allotment of 20lac shares and 25 lac shares made on 25-4-2003 and 28-3-2005 respectively in terms of the provisions contained in the Companies Act, 1956 is a matter which has to be decided by the Company Law Board and not by this Authority. As far as the challenge to para 6.3.v) clauses (f) & (g) are concerned, which requires the appellant to execute personal guarantee in favour of IDBI, it may be mentioned that this is no longer the relevant issue as the dues of IDI and SBI, the two secured creditors of SSOL, have been already cleared.
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> 15. Under these circumstances we find that there is no justification for us to interfere with the impugned order dated 2-1-2005 in so far as clauses (a) and (b) of para 6.3 (v) is concerned. Appeal is, accordingly, dismissed subject to the modification at para 12. ".

11. A further glance of the impugned order the first respondent-appellate authority had taken note of the challeng made to para 6(3) clause 5 (a to h) on the ground that the scheme adversely affected the interest of the writ petitioner-appellant and also referred to the other clauses and further analyzed the fact at para 6 and recorded the contentions and then proceeded to decide. The affidavit filed in support of the writ petition was sworn by the General Power of Attorney Holder Sri Subba Reddy- the writ petitioner it is averred in para 2 of the affidavit filed in support of the petition that the third respondent company was initially incorporated as a Private Limited Company in the month of November, 1990 and it was subsequently converted into a public Limited Company in the year 1993. It is further averred that the manufacturing plant and registered office of the 3rd respondent company is situated at Aroor village. Sadasivapet Mandal Medak District with its Corporate Office at Hyderabad. The promoters of the 3rd respondent company include the petitioner Dr. Sadasiv Reddy, V.V. Kotte Rao and Dr. Sai Sudhakar. Thus, there were four persons who are promoters of the 3rd respondent company and except the petitioner. The other promoters are not

evincing interest in the management and administration of the affairs of the company. The 3rd respondent company was established for manufacture of life saving drugs and various other intermediates and thus it is a bulk drug manufacturing company. The petitioner being a non-resident Indian has appointed the 6th respondent a close relative of the petitioner as an alternate Director of the company in the year 1993 with an expectation that the 6th respondent would contribute his best to the affairs of the company. In fact, the 6th respondent was appointed as Executive Director and later as Managing Director with effect from 01-01-1997. At that time, the shareholding pattern of the 6th respondent was only 0.54% whereas the shareholding of the petitioner was about 23.78%. In fact the petitioner along with the other promoters have infused funds into the company through friends and relatives to the tune of Rs.1.68 crores by way of unsecured loans. It is further averred that the petitioner has provided continuous financial assistance to the company in the form of unsecured loans from time to time by pledging his shares and arranging loans from M/s Wipro to the tune of Rs. 60 lahs in the year 1995 and also contributed about Rs. 30 lakhs has unsecured loans for revival of the company. I submit that the 6th respondent was never appointed as the nominee of the petitioner. He was only a specific power of attorney holder concerning shareholding of the petitioner. Since the petitioner is a non-resident Indian, most of the time he was out of India and this has facilitated the 6th respondent to commence maneuvering the affairs of the company to the detriment of the petitioner.

12. It is further stated that in the month of June, 2003 , the petitioner was informed that it was required to infuse certain funds for survival of the company and being a promoter Director holding 23.78 of the total shareholding and having invested huge funds to the extent of Rs. 1.32 crores into equity of the company, the petitioner has contributed a further amount of Rs. 16.69 lakhs on 15-01-2003. Despite the contribution made by the petitioner, the 6th respondent was not disclosing the true profile of the 3rd respondent company and the petitioner, on enquiry came to know that the 6th respondent has obtained a rehabilitation scheme dated 12-2-2002 for the revival of the 3rd respondent company which has provided for conversion of unsecured loans by the promoters, friends and relatives into equity. It is

further stated that the 6th respondent has removed two of the promoter Directors viz. Dr. Sai Sudhakar and Dr.D. Sadasiv Reddy and in view of the conversion of unsecured loans into equity, the 6th respondent has mischievously obtained majority in the shareholding pattern of the 3rd respondent company and became holder of 30% of the shareholding while the shareholding of the petitioner was reduced from 23.78 to 18.14% . The change of shareholding pattern has occurred due to exploitation of the rehabilitation scheme dated 12-2-2002 for the exclusive benefit of the 6th respondent since by showing book entries as unsecured loans. The 6th respondent has got converted the unsecured loans worth Rs. 200 lakhs into equity shareholding. As per the order of the BIFR dated12-2-2002, the conversion of unsecured loans into equity is applicable only in respect of those unsecured loans which are raised by the promoters, relatives and friends and, therefore, the 6th respondent was not eligible to have his equity shareholding increased in the company since he was never a promoter Director of the company. The modus operandi adopted by the 6th respondent, by exploitation of the order of the BIFR dated 12-2-2002 is by calling an extraordinary general body meeting on 27-1-2003 and getting the resolution passed on 25-4-2003 wherein the unsecured loans were converted into equity. Though the BIFR has announced a rehabilitation scheme on 12-2-2002 by a subsequent order dated 19-6-200, it has declared that the scheme has failed and, therefore, directed winding up of the company u/s 20of the Act. Since the rehabilitation scheme dated 12-2-2002 was declared as failed by order dated 19-6-2003, the allotment of shares dated 25-4-2003 should not have any legal validity. Perhaps sensing the same, the 6th respondent has again moved the BIFR and got a rehabilitation scheme issued on 1-2-2005 wherein it was observed that the promoters shall bring further unsecured loan of Rs. 250 lakhs during the financial years 2003-04 and 2004-05 and shall agree for conversion of the unsecured loans of Rs. 250 lakhs into equity shares of Rs.10/ each and they shall also guarantee obligation of the promoter Director for repayment of dues to IDBI and the petitioner shall execute a personal guarantee in favour of IDBI.

13. It is also stated that the above said observations which are part of Clause 6.3 (v)(a),(b),(f),(g) and (i) the petitioner has filed an appeal u/s 25 of

the Sick Industrial Companies (Special Provisions) Act. 1985 contending that the said clauses are objectionable since they are without notice to the petitioner and also on the ground that the impugned clauses would benefit the 6th respondent to further enhance his share holding pattern in the company. It is also relevant to submit here that the petitioner has filed an Original Petition before the company Law Board, Chennai in O.P.No.22 of 2005 complaining oppression, mismanagement, fraudulent allotment of shares etc., One of the reliefs claimed before the Company Law Board is about the invalidation of the shares that were allotted in the extraordinary general body meeting dated 27-2-2003 and the consequential board meeting dated 25-4-2003. Thus, the reliefs claimed before the 1st respondent-appellate authority in Appeal No. 48 of 2005 and CP No.22 of 2005 are substantially different. However, to the misfortune of the petitioner, on a preliminary objection raised before the Company Law Board, it has held that the validity of the allotment of shares dated 25-4-2003 cannot be gone into by a conversion is build up to gain majority in the shareholding of the 3rd respondent company. Even if the infirmities about the extraordinary general body meeting and the board meeting are kept aside, when the scheme SS-02 was declared failed on 19-6-2003, no legal validity would stand attached to the changed shareholding pattern as per the minutes of the board meeting dated 25-4-2003. Further, the allotment dated 25-4-2003 was not disclosed upto April, 2004, which itself creates any amount of doubt about the very allotment of shares by way of conversion. Further, the 6th respondent has not shown the so called allotment before the 3rd respondent upto September, 2003. Further, even as per the balance sheet for the period ending September, 2003, the share capital is shown as 555 only. All these circumstances would clearly disclose that the so called allotment is sham and intended only to gain control to eliminate the petitioner from the control of the company.

14. Further it is averred that the appellate authority 1st respondent herein has all the jurisdiction to find fault with the scheme formulated by the 2nd respondent on 27-1-2005. For all practical purposes, when the scheme dated 12-2-2002 was declared as failed as per order dated 19-6-2003, the scheme sanctioned on 27-1-2005 is nothing but a fresh scheme and not a modified scheme of the rehabilitation scheme dated 12-2-2002. The objective of the

6th respondent is to gain further control over the company by conversion of another Rs.250 lakhs unsecured loans into equity. It is relevant to submit here that if the scheme dated 12-2-2002 or 27-1-2005 is implemented in its true sense that the promoters alone should get benefit of the converted unsecured loans into equity, the 6th respondent would not stand to any benefit at all and all that should have accrued to the credit of the petitioner but by a total contravention of the scheme dated 12-2-2002 and 27-1-2005, the 6th respondent has designedly converted it and that the same has to be decided by the first respondent in Appeal NO. 48 of 2005. Challenging the decision of the Company Law Board in C.A.No. 54 of 2005 in CP No. 22 of 2005, the petitioner has already filed an appeal in C.A.NO. 19 of 2005, which is pending.

15. Further certain grounds had been raised how in the said appeal the petitioner has raised several ground to invalidate to the compounding clause and how the impugned order dated 28-12-2005 of the first respondent had not adverted to the correctness or otherwise, the allegation of the share under SS-02 or SS-5 and how the first respndent-appelalte authority refused to interfere with the scheme dated 27-1-2005 issued on 1-2-2005 insofar as Clause A and B of para 6(3_ (5) are concerned.

16. Respondents 3 to 6 filed counter affidavits in W.P.M.P.Nos. 427, 428, 1355 and 1356 of 2006 . It is needless to say that the third respondent is M/s S.S.Organics Limited whereas the 6th respondent is ShriV.N.Sunanda Reddy, Managing Director of the said company. It is stated that the third respondent is private limited incorporated in the year 1990 and became a public limited company in February, 1993. It is stated that the 3rd respondent company on 1-1-1997 when all the promoter directors voluntarily resigned as whole time directors because of the financial strain. There were mounting statutory dues/cheque bounce cases/ civil suits/ winding up cases. At the time of my appointment as Managing Director the liability of the 3rd respondent company was around Rs. 10 crores. As on 31-3-1997, the entire net worth of the company was fully eroded and a reference was made as required by the law to the Board for Industrial and Financial Reconstruction under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, at New Delhi and registered itself as a Sick Industrial Company.

17. It is stated that the present petition is filed with *malafide* intention and to gain control over the company which has been successfully rehabilitated without any financial or managerial support or assistance of the petitioner. In fact, the petitioner was actively involved in the management of the company, till the company became sick and totally disassociated since then being away from India in U.S.A., and engaged in the business of software profession with his spouse a professional Doctor earning millions of dollars with his family and contributing nothing for the rehabilitation of the company during the entire period of 8 years since the company became sick. The petitioner was appointed as a director of the company on 9-12-1993 . Subsequent to his appointment and till 31-3-1997 he has attended in person 5 out of the 18 Board Meetings held during that period. After the company became sick and until the Modified Rehabilitation Scheme was sanctioned during October,2004, the petitioner has attended only1 Meeting out of the 35 Board Meetings held during the 8 years when the revival process was going on before Honourable BIFR. The one meeting he has attended during the entire 8 years is also when the Board met to take note of theSS-2 i.e. Sanctioned Scheme dated 12-2-2002. The petitioner who now claims to be a promoter of the company had at that point of time distanced himself from the company and played no part in the process of rehabilitating and reviving the company. Subsequent to the sanction of the scheme he has initiated several legal disputes and attended 4 out of the 6board meetings held till his non reappointment as a director of the company by the shareholders at the Annual General Meeting held on 29-9-2005.

18. Further, it is averred it is pertinent to note that the petitioner has never choose to be a party to the proceedings before BIFR. It was therefore, left to the 6th respondent in his capacity as Managing Director of the Company to formulate a rehabilitation proposal which was submitted to the operating agency i.e.I.D.B.I. appointed by the BIFR. Now, when the company is healthy and debt free and consequently, the share price doing well in the stock market, the petitioner is trying to gain control over the company. The personal interest of the petitioner is the only purpose of this petition and thereby totally ignoring successful revival of the company and the interest of various stake holders viz. around 9000 shareholders and investors, banks, financial institutions, government and statutory authorities, employees etc.,

19. It is also averred that the petitioner given totally distorted facts. The petitioner was never in control of the administration and management of the company. In fact, the other three promoters were working as whole time directors of the company till the company became sick. It is however, incorrect to state that the petitioner and other promoters along with their relatives and friends had contributed a sum of Rs. 168 lakhs as is contended by the petitioner. Further no continuous financial assistance or unsecured loans were extended to the company. Mr. V.N. Sunanda Reddy's was holding of 30000 shares since 1992 that is to say much prior to the association of the petitioner with the company. As a promoter Director his holding was only 9% but not 23.78%. Because of the acquisition of further shares after 1995 in the off market he has reached the percentage of 23.78. So, his further investment in shares acquired by payment to third parties cannot be construed as contribution to the company. All submissions made by the petitioner in this regard are denied as false and incorrect.

20. It is stated that no evidence has been placed on record by the petitioner to substantiate his claim that he had made the alleged investments in the company. Further, it is incorrect for the petitioner to contend that the petitioner gave a specific power of attorney in favour of Mr. V.N. Sunanda Reddy to operate his shareholding. It is however admitted that a general power of attorney had been executed by the petitioner in favour of Mr. V.N. Sunanda Reddy, which was revoked subsequently. It is submitted that the power of attorney to operate his funds lying in the account of around Rs.20 lacs were utilized to make investments in the name of the petitioner in certain other companies and were also utilised to meet the medical expenses of the mother of the petitioner. The said transactions took place between 1994 to 1996 i.e. prior to the company becoming sick. It is further submitted that the petitioner had never instructed the deployment of the funds lying in his bank account for the purpose of rehabilitation of the company. As regards the averments made by the petitioner regarding the loan from Wipro Finance Limited is concerned, it is submitted that the petitioner along with other promoter directors then on board had arranged an unsecured loan from Wipro Finance Limited at the relevant time when the petitioner and other promoters were in charge of the affairs of the company and before the company became sick. However, pursuant to sickness of Respondent NO.3 company the only contribution

made by the petitioner is a sum of Rs. 16.69 lacs.

21. It is also stated that the funds advanced by him can hardly qualify to be regarded as promoters contribution as the funds had been arranged by him only for the purpose of release of his share certificates pledged as security to the I CD extended by Wipro to the Company. The ICD had been placed by Wipro with Respondent No.3 Company in August, 1995 when the previous management was at the helm of affairs. Wipro had been demanding payment of the dues and has served notices for selling the shares or transfer of the same into its name. The present Management headed by the 6th respondent helped in release of the shares of the petitioner by bringing in necessary loans to repay the dues of Wipro and ensured the release of his shares in 2003. It is reiterated that the Petitioner's contribution to the company by way of unsecured loans for the purpose of revival of the company is nil.

22. It is also stated that the petitioner should also place on record all the necessary information with evidence of his commitment to the company during the past 8 years instead of staking vague and unsubstantiated claims of promoter's contribution as is being claimed by him. It is pertinent to note that on one hand the petitioner claims to be instrumental in continuing the operations of the Company and on other hand declines to participate in the affairs of the company and expresses his inability to do so being an NRI. The petitioner has no moral right to stick on to their equity when the company virtually became sick and the petitioner has not contributed any thing for the revival of the company. The petitioner alleges that the respondent No.6 is not his nominee and a contrary claims for appointing him as alternate director. It is the Board who appoints the alternate director and not the individual Director choice or his wishes. The Board appointed the 6th respondent as alternate director till his appointment as Managing Director. The petitioner is trying to mislead the Hon'ble Director, the Petition is trying to mislead the Hon'ble Court by twisting the facts and trying to make the efforts of the 6th respondent in revival of the company as insignificant.

23. It is further averred that on the one hand the petitioner claims to be instrumental in continuing the operations of the company and on other hand declines to participate in the affairs of the company and expresses his inability to do so being an NRI. It is totally false that the 6th respondent removed Dr. Sai Sudhakar and Dr. D.Sadasiva Reddy as directors of the company. The

petitioner seems to be ignorant about the Company Law provisions. These people who were contributing nothing to the company and directly responsible for sickness of the company were not reappointed as Directors by the shareholders at the Annual General Meeting of the company. When they were not reappointed as directors of the company the 6th respondent was not holding the said shares allotted as per SS-2 on 25-4-2003 and the so called promoters including the petitioner were the majority shareholders.

24. Further it is stated that conversion of unsecured loan into equity is concerned it is submitted that the allotment of shares by conversion of loans into equity was taken up during January, 2003 in compliance with the covenants of the sanctioned scheme. At that point of time, the Company could not have foreseen the failure of the scheme as alleged by the Petitioner. BIFR vide order dated 19-6-2003 has declared the Rehabilitation scheme sanctioned on 12-2-2002 has failed and directed winding up of the company. However, on representation of the matter and with the concurrence of the operating agency i.e. IDBI, the said order has been kept in abeyance by BIFR vide its order dated 26-9-2003. The respondents thereafter held a series of meetings with the operating agency and on the basis thereof a modified scheme was placed before the BIFR. The BIFR after considering all aspects by its order dated 27-1-2005 was pleased to sanction such modified scheme. In such modified scheme it was brought to the notice of the BIFR that the said 20 lakh shares had been allotted in pursuance of the scheme 02 and accordingly the capital structure of the company as set out in the scheme included such allotment. Keeping this in mind, the BIFR sanctioned the modified scheme which provides *inter alia* for the conversion of a further sum of Rs. 250 lakhs of unsecured loans into equity. Thus the BIFR has taken into consideration, the allotment of the said 20 lakhs shares made on 25-4-2003.

25. It is further stated as measure of good corporate governance, the company has called a shareholders meeting for approval for issue of shares in the year 2003 even though as per the scheme the statutory procedures/guidelines under the Companies Act/ SEBI are not applicable. The Board of Directors offered the shares to the extent up to Rs. 50 lacs to the Petitioner and his associates. However, the Petitioner did not accept the offer due to reason that the share value of the company as on the date of allotment was around Rs. 5.50 per share where as the shares were issued at

Rs.10/-. As the offer of allotment was not accepted by Petitioner the Board of Directors of the company proceeded to allot the shares to his alternate director/relatives/associates to comply with the scheme. The petitioner contention that the 6th respondent has got allotment Rs.20 lacs shares by conversion of unsecured loans with book entries is totally denied. In fact, there were 37 allottees whose unsecured loans as per the books of the company were converted. The respondent No.6 has been duly recognized as one of the promoters as submitted and accepted in Form No. A to BIFR. At the time of allotment of shares, the BIFR order dated 12-2-2002 was in force.

26. It is stated that in fact the petitioner was present in the Board Meeting of the company held on 26-2-2002, in which the scheme approved by Hon'ble BIFR dated 12-2-2002 was placed for consideration. The petitioner went on record appreciating the efforts put in by Mr. V.N. Sunanda Reddy in obtaining the approval of the rehabilitation package. The petitioner was thus fully aware that as per the scheme as sum of Rs.200 lacs of unsecured loan has to be converted into equity shares. The petitioner at the relevant time opted not to participate in allotment as the shares were being allotted at Rs. 10/- per share whereas the market price then was only Rs. 5.50. The shares were allotted to the persons who opted for conversion of loans into equity. Further the scheme provides for issue or shares to promoters/associates. It is stated that there is no change in the share holding pattern except as envisaged in the scheme and also there is no change in the management of the company. It is however, incorrect for the petitioner to contend that the scheme was given effect to only with respect to the issue of shares. The petitioner had not raised any such allegation on any earlier occasion during the entire period of 8years when the matter was before BIFR and the company was struggling for survival.

27. It is also averred that the petitioner has now preferred the writ petition to drag the respondent No. 3 and 6 into litigations once the company had become a debt free company. Further his allegation after nearly two years of allotment is influenced by the steady increase in the share market value as well as improvement in the company operations. The petitioner is aware of each and every aspect of the scheme. He has specifically attended the only that Board Meeting held on 26-2-2002 during the entire 8 year period from 1997 to 2004 to know about the BIFR package being placed at the Meeting.

The petitioner having aware of the BIFR scheme dated 12-2-2002 did not initiate or contribute towards implementation of the scheme. During 2002 the Respondent No.3 settled an OTS with SBI and full and final payment was made before 31-12-2002. The BIFR scheme sanctioned on 27-1-2005 allows further relief's and concessions and for further conversion of Rs.250 lacs of unsecured loans into equity apart from retaining the capital of the company at the then level of Rs. 755 lacs which includes the capital of Rs.200 lacs. The BIFR order dated 27-1-2005 does not question the legality of the allotment of Rs.200 lacs made earlier by the company. The BIFR was aware that the allotment of shares by conversion of unsecured loan of Rs. 200 lacs into equity was essential for the revival of the company and therefore did not cancel the allotment already effected. By contending that the scheme was framed for the benefit fo the respndentNo.6, the petitioner has negatived the functioning of the BIFR, operating agency (IDBI) and has unfairly questioned their integrity by accusing that the scheme was framed for the benefit of the respondent No.6. The execution of the guarantee in favour of IDBI never arose as all the liabilities of IDBI are cleared before allotment of shares by conversion of Rs. 250 lacs of unsecured loans brought in by respondent No.6.

28. Further it is averred that in normal course of business because of which the company could survive the operations and was able to honour the commitment in repayment to the institutions, outstanding PF, ESI and other statutory dues. Despite being a promoter, the petitioner has not shown any interest in the day to day affairs of the company or participated in negotiation/discussion with the creditors. The petitioner's concern appears to have come to the forefront once the operations of the company have turned around and the market price of the shares has gone up. The petitioner has failed to show cause as to how reduction in the share holding percentage shall adversely affect the growth of the company. It is reiterated that the petitioner has deliberately abandoned the company and is now attempting to unfairly seek a larger share of the benefits of the revival of the company.

29. Further while replying to the contents of the averments made in para 4 of the affidavit in support of the writ petition, it is stated that the petitioner had filed a suit being O.S.No. 3167 of 2004 before the II Senior Civil Judge, City Civil Court, Hyderabad wherein he had purported to challenge the allotment of 20 lakh shares made on 25-4-2003 pursuant to the Rehabilitation scheme

dated 12-2-2002. In the said proceedings the City Civil Court had passed an order to the effect that the suit is to be valued at Rs.50 lakhs and Court Fee accordingly be paid thereon. The Honourable City Civil Court dismissed the said suit on pecuniary jurisdiction. The petitioner is yet to withdraw the plaint in the said suit.

30. It is further stated that the petitioner has also filed another civil suit in O.S.No. 3286/2004 on 16th July, 2004 challenging the constitution the Board of Directors of the company which is pending.

31. Further the petitioner filed an appeal No. 48 of 2005 before the AAIFR against the order of the BIFR dated 27-1-2005 sanctioning the modified scheme. In the said petition a specific reference is made to the fact that in terms of the scheme dated 12-2-2002 the promoters were required to convert unsecured loans of Rs. 200 lakhs into equity. The petitioner has further prayed for a declaration that the terms of the earlier sanctioned scheme dated 12-2-2002 has failed and obtained *ex-parte* interim orders in relation to the allotment of 250 lakhs shares made on 28-3-2005 by the 3rd respondent company pursuant to the order of the BIFR dated 27-1-2005 sanctioning the Modified Rehabilitation Scheme.

32. It is also averred that the petitioner filed a Company Petition No.22 of 2005 under section 397 and 398 of the Companies Act, 1956 before the Company Law Board, Additional Principal Bench at Chennai challenging the allotment of 20 lacs shares by the first respondent company and prayed for other consequent relief's. The Honourable Company Law Board passed interim orders dated 19-4-2005 holding that the respondents will file status report with regard to 20 lakhs shares impugned in the Company Petition and any transfer of the shares will be subject to final order that may be passed in the company petition and further held that any proposal for declaration of dividend, or bonus or right issue by the company will be with the leave of this bench.

33. It is also stated the petitioner is prosecuting parallel proceedings on the basis of the same allegations and for similar relieves, the respondents filed Company Application No. 54 of 2005 questioning the jurisdiction of the Company Law Board to entertain the company petition as the 3rd respondent was a sick company and is under rehabilitation as such there is a Bar of jurisdiction as per section 26 of the SICA and further since the petitioner has

also filed an appeal before the AAIFR challenging the allotment of 20 lakhs shares and since allegations in relation to non-compliance with the scheme has to be raised before the BIFR the Company Petition needs to be dismissed *in limini*. It is submitted that the Company Law Board passed the orders dated 10-10-2005 holding that as the issue relating to allotment of 20 lakhs shares is raised and pending before the AAIFR and any grievance in relation to the non-compliance of the scheme has to be raised before the BIFR in terms of the provisions of SICA and therefore the Honourable Company Law Board has no jurisdiction to entertain the dispute of the issue i.e. conversion of un-secured loans into equity share capital of the company and consequent allotment of 20 lakhs shares. Further the Company Law Board rightly held that the petitioner can not seek to prosecute parallel proceedings on the basis of the same allegations and for similar relieves. The interim orders passed by the Company Law Board dated 19-4-2005 are still in force and the same was further clarified on 6-5-2005 that the allotment of 20 lacs shares will be subject to final order that may be passed in the Company Petition No.22 of 2005. One of the main pleas of the petitioner in the interim relief sought in the said matter was for freezing of the voting rights on these 20 lacs shares. The Company Law Board having taken into consideration of various factors has declined to give such interim relief. The petitioner with *mala fide* intention by suppressing the facts is belatedly agitating the matter 7 months after obtaining the interim orders on 19-4-2005 from Company Law Board.

34. It is also averred that the petitioner has not challenged the order dated 19-4-2005 before CLB or any other Court. The petitioner allowed things to happen and having lost his main relief before Company Law Board is now belatedly questioning the order of Company Law Board and filed an petition in Company Appeal No. 19 of 2005 which is pending. The petitioner by misrepresenting the facts obtained an *ex-parte* interim order dated 8-11-2005 in C.A. No.1119 of 2005 in Company Petition No. 19 of 2005 restraining alienation/transfer of the equity shares worth Rs. 200 lacs which is nothing but similar orders of Company Law Board dated 19-4-2005. The petitioner once again is misleading the Court that in C.A.NO. 1198 of 2005 in Company Appeal No. 19 of 2005 and in the present in W.P.No. 350 of 2006 is praying for the similar relief i.e. freezing of the voting rights on the shares allotted by conversion of Rs. 200 lacs on 25-4-2003. Thus, the petitioner is

prosecuting parallel proceedings by abusing the process of law.

35. It is further stated that the petitioner is very well aware that out of 20 lakh shares only 5,22,500 shares held by 6 persons are only in physical form and the rest of the shares have long been demated i.e. Prior to all the disputes on these shares and the same are in fungible nature and hence holders of these demated shares cannot be identified now. Hence, restraining of voting rights on these shares is not proper and not possible. The petitioner is only agitating to safeguard his interest for *malafide* intentions by distorting the facts and approaching this Court for non existing and for impracticable relief. The petitioner has made all the allottees of the 20 lacs shares numbering around 37 persons as respondents in the Civil Suit O.S.No.3167/ 2004 as well as in the company petition NO.22 of 2005. However, for the reasons best known to the petitioner, none of the allottees except respondent NO.6 out of the said 20 lacs shares has been made as party in this present petition. The petitioner is attempting to usurp the rights of the said 20 lacs shares indirectly in this petition without the knowledge and notice of the allottees/purchaser of these shares. This is a blatant attempt and violation of principles of natural justice on the rights of several unknown persons.

36. It is also stated that the petitioner's objection to the said allotment of shares is a belated attempt to jeopardize smooth trading in the shares of the company. The petitioner grievance against the said shares is misconceived, suffers from delay and latches and misdirected against the innocent allottees of shares and bonafide purchasers of these shares in the market. The petitioner who was not reelected as director of the Company has now hatched a plan to disturb the present successful management of the company by preventing voting rights of the genuine investors and to take control of the company for hi malafide intentions.

37. In reply to para 5 of the affidavit filed in support of the writ petition, the following averments were made in para 6 (a).

38. It is stated that the petitioner in his Appeal No. 48 of 2005 before the AAIFR i.e. 1st respondent was only concerned about the clauses which are about bringing in of the unsecured loans, conversion of the same into shares, guarantee to IDBI for the repayment of loans, pledge of shares till repayment of loans and obligation for payment of contingent liabilities.

39. Further is stated that the appellate authority having taken into

cognizance of various acts and elaborate arguments has categorically found that Mr. V.N.Sunanda Reddy the respondent No.6 has only brought in the unsecured loans and the dues of the secured creditors viz. IDBI and SBI have been fully settled. Accordingly, the Appellate Authority has held that the petitioner obligation with regard to guarantee to IDBI for the repayment of loans, pledge of shares till repayment of loans does not arise and the 3rd and 6th respondents have to bear the obligation for payment of contingent liabilities.

40. It is also stated now the petitioner is distorting the facts and without any substantial evidence and by misleading the facts is again approaching on the orders of the Appellate Authority, having failed to contribute any thing for the revival of the company but making baseless allegations.

41. Further, it is stated that Books of Accounts of the Company right from 1996-1997 clearly show the details of the unsecured loans brought into the Company. This fact was also certified by the Statutory Auditors of the Company in their Auditors' Report. This was reflected in the audited Balance Sheets of the Company which in turn be placed before the Board of Directors and circulated to the shareholders before the Annual General Meeting and published in the news papers incompliance with the Companies Act every year. The petitioner being one of the Directors of the Company during that period is estopped from taking his plea. It is also pertinent to note that on the one hand the petitioner is contending that 200 lacs unsecured loans were not infused into the Company and all are book entries and on the other hand he is contending that unsecured loans were also brought into the Company by the petitioner. Since, 1997 the respondentNo.6 is instrumental in regularly bringing ICDs and unsecured loans for the sole motive of reviving the Company as per the BIFR directions and OTS settlements. When the Company became sick in 1997, the share price of the Company at that time was only 50 paisa and the promoter directors were not infusing any funds for the revival of the Company and escaped their responsibilities to the investing public. The Company's Assets/turnover since 1997 is continuously increasing and there has been a study growth.

Rs. In crores

Year	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04

Assets	9.31	9.79	10.01	2.31	13.38	13.84	15.14	17.77
Turn-Over	0.95	2.12	2.55	2.57	7.55	9.81	16.60	27.25
Net Profit	348.21	125.82	147.78	200.37	121.59	133.35	654.10	63.26

The above statement clearly demonstrates the commitment of the Management lead by the respondent No. 6 as the Managing Director of the Company in reviving the company by clearing of all the secured liabilities and statutory dues and increasing the asset base by 100%. The study increase in the turn over and profits of the company are reflection of the commitment of the respondent No.6 for successful revival of the company. However, the petitioner without any basis is making wild allegations that no unsecured loans were brought into the company and they are mere book entries. IF so, how the company could met all the commitments and reviving successfully and guaranteeing return on the investment of the share holders. During the entire 8 years period he has shown interest in the company affairs only on one occasion that to know the BIFR scheme sanctioned in 2002.

42. In para 7 of the counter affidavit, it is stated that admittedly, the petitioners contribution of the petitioner subsequent to the company became sick is a paltry sum of Rs. 16.69 lacs as against infusion of unsecured loans of around Rs.500 lacs by Mr.V.N. Sunanda Reddy and Associates during the last 8 years after the company became sick. Even this contribution of the petitioner is for the release of the petitioner shares pledged with a financier. Hence, the petitioner has not contributed anything subsequent to the company became sick and on the contrary abandoned the company. Hence, the petitioner has no moral or legal right to claim for any allotment of shares either pursuant to the sanctioned scheme dated 12-2-2002 or modified sanctioned scheme dated 27-1-2005.

43. It is also averred that the petitioner was well aware of the order of the BIFR dated 12-2-2002 as early as on 26-2-2002. The order of the BIFR dated 12-2-2002 was placed in the meeting of the Board of the Directors of the Company held on 26-2-2002, wherein the petitioner was very much present. Thus, the petitioner was aware of the order of the BIFR dated 12-2-2002, proposing allotment of 20 lacs shares of Rs. 10/- each as part of the sanctioned scheme as early as on February, 2002. The petitioner has neither

taken steps for infusion of any funds into the company for the rehabilitation of the company nor challenged the order of the BIFR. The petitioner wanted intentionally and waited the other promoter to infuse funds into the company to pay of the debts of the company and rehabilitate the company. Now, the petitioner is challenging the order of the BIFR dated 12-2-2002 and the allotment of 20 lacs shares. In view of these facts, this petition is hopelessly time barred. The petitioner is fully aware of the allotment of shares and allowed things to happen and is challenging belatedly. There is serious laches on the part of the petitioner.

44. It is further averred that the petitioner is well aware of the fact of this 20 lacs shares allotment made pursuant to the sanctioned scheme dated 12-2-2002, but had not challenged the order of the BIFR dated 12-2-2002 before BIFR/AAIFR at any time before. For that matter, the petitioner has not even written to the company objecting to the allotment of the said shares till filing of the suit in Civil Court in July, 2004. Having not challenged the order of BIFR dated 12-2-2002 even after having full knowledge of the same as early as in February, 2002, cannot challenge this order of the BIFR dated 12.2.2002 in this petition. Without conceding but even assuming that the petitioner is not in knowledge of 20 lacs shares allotment, when he participated in the Board Meeting held on 26-2-2002, where in the sanctioned scheme was placed, the petitioner had full knowledge when the petitioner filed the civil suit, which is July, 2004. The petitioner allowed further time to lapse and indirectly challenged the order of Honourable BIFR dated 12-2-2002 in March, 2005 before AAIFR after lapse of 7 months from July 2004, the period by which the petitioner had initiated the civil suit.

45. It is also stated that the petitioner subsequent to receiving interim orders from this authority vide orders dated 21st March, 2005 and 31st March, 2005,approached the Company law Board in C.P.No.22/2005 and has challenged the very same allotment of 20 lacs shares of Rs.10/- each made by the company, pursuant to the order of the BIFR dated 12-2-2002. The petitioner has vehemently opposed the application of the respondent company and pressed that the Company Law Board has the jurisdiction to entertain the company petition on the said allotment of 20 lacs shares, made pursuant to the order of the BIFR dated 12-2-2002. From the above it is crystal clear that the petitioner is clearly doing forum shopping with various judicial

forums on the same issue i.e. one in the form of civil suit in Hyderabad Civil Court, again the same issue in Company Law Board, before AAIFR and this Court.

46. Further a specific stand had been taken that the petitioner himself is responsible for the jinx created by his own misdeeds about his grievances referred to AAIFR and Company Law Board and other civil Courts. The petitioner always chooses to run parallel proceedings on the same issues before various forums by abusing of law.

47. It is also averred that the respondent company allotted 20 lacs shares on 25-4-2003 after passing necessary resolutions under section 81 (1A) of the Companies Act, 1956 in the extraordinary general meeting held on 27-2-2003. The notice of this meeting was sent to all the shareholders including the petitioner and the resolution was approved unanimously. The nominee director of APIDC, a state level financial institution was present in the board meeting of the company in which, the allotment of 20 lacs shares was made. The fact of this allotment made on 25-4-2003 was immediately notified to the stock exchanges. In fact on receipt of this information from the company the Bombay stock exchange has notified the same to the public through its official web site on 2-5-2003 and is still available. Hence, the allegation of the petitioner that nobody has the information of the allotment of the said shares and the allotment is back dated one is baseless.

48. It is further alleged that one of the allegations of the petitioner is that Mr. V.N. Sunanda Reddy, Managing Director of the Company is not one of the promoters of the company. This statement is far from true. The petitioner himself is not one of the signatories to the incorporation of the company and only subsequently joined the company. The petitioner joined as a Director of the Company, just before the public issue in 1994 and stated himself as a promoter of the company. By the same analogy, Mr. V.N. Sunanda Reddy took over the Managing Directorship of the company in 1997 and as such become a promoter of the company in 1997. Mr. V.N. Sunanda Reddy has been classified as a promoter of the company in the Form A filed with the BIFR for the reference made under section 15 of SICA. Hence, the allegation of the petitioner that the allotment of 20 lacs shares is not in accordance with the order of the BIFR dated 12-2-2002 is ill conceived.

49. It is further stated that the another allegation of the petitioner is that the

allotment of 20 lacs shares is subsequent to the declaration of the scheme dated 12-2-2002 as failed. The BIFR has declared the scheme sanctioned dated 12-2-2002 as failed only through its order dated 19-6-2003 and directed winding up of the company. However, a representation of the matter and with the concurrence of the operating agency i.e. IDBI, the said order has been kept in abeyance by BIFR vide its order dated 26-9-2003. The allotment of 20 lacs shares was made on 25-4-2003, much earlier to such declaration of the failure of the scheme by the BIFR. In any case, while sanctioning the modified rehabilitation scheme dated 27-1-2005, the BIFR has duly recognized the said allotment of 20 lacs shares as per the sanctioned scheme dated 12-2-2002.

50. Further as mentioned above the allotment of 20 lacs shares by the company was of public knowledge immediately after the allotment on25-4-2003l and hence, the contention of the petitioner that the allotment of the said 20 lacs shares subsequent to the declaration of the scheme has failed has no basis. As per the audited balance sheet of the company as on 30-9-2003 the paid up share capital of the company was shown as Rs. 755 lacs only and not Rs. 555 lacs.

51. It is also stated as the company was a sick company with severe liquidity crisis there was a delay in filing the requisite fee on enhanced capital to the Registrar of Companies which was paid subsequently with interest. This is a procedural compliance of company law requirements and not any violation. In view of this the enhanced capital was not shown in the up audited results or share holding pattern till filing of the documents with ROC. However, the stock exchanges have taken note of the same immediately on allotment and have accordingly listed the said shares on the exchange. It is not the 6th respondent alone who got the allotment of shares but also several others who are unsecured creditors to the company as on the date of issue of the said shares.

52. It is also averred in para 15 of the counter affidavit that the sanction of modified scheme dated 27-1-2005 is actually sanctioned by the BIFR in the hearing held on 18-10-2004 vide its order dated 15-12-2004. In paragraph 4(i) of the said order, the Bench noted that the Bench has sanctioned the modified rehabilitation scheme (MDRS) as modified at that hearing in terms of section 18(4) read with section 19(3) of the Act with immediate effect. The petitioner

has not challenged the said order of the BIFR sanctioning the modified scheme. Hence, the petitioner cannot challenge the order of the BIFR dated 27-1-2005, which is only a consequential order to the order of the BIFR of the hearing of 18-10-2004 dated 15-12-2004. The petitioner has not taken any steps to take up the matter to the BIFR in this regard. In line with his intention of not infusing any funds for the rehabilitation of the Company, the petitioner continued to keep silence on the matter. The BIFR circulated a modified draft rehabilitation scheme vide order dated 02-08-2004 inviting objections/suggestions to the said MDRS. The BIFR also issued public notice of the MDRS inviting the statutory hearing to be held on 18-10-2004. In the said hearing 18-10-2004, as mentioned earlier the BIFR sanctioned the modified scheme subject to the amendments discussed and decided in the said hearing. The petitioner with ulterior motive of sanction of the scheme and settlement of liabilities choose not to present his case, if any, before the BIFR. Now, the petitioner cannot challenge the scheme under the pretext of personal injustice.

53. It is further stated that the petitioner waited for the scheme to be sanctioned and all liabilities to be repaid and the company has become a debt free company and is now coming and challenging the scheme. The petitioner failed to present any valid reason for not impleading himself before the BIFR even after fully knowing that the proceedings are with the BIFR and the petitioner is claiming himself to be a promoter of the Company. The petitioner has no case for challenging the scheme, which has been sanctioned after complying with due process of law. The petitioner has not shown any interest in the rehabilitation of the company nor infused any funds for the rehabilitation. Now just because the share prices have increased, cannot agitate the issue to serve his interest at the cost of successful implementation of a rehabilitation scheme.

54. Further, it is averred in para 17 one of the allegation of the petitioner is that the petitioner has not been allotted any shares either in 20 lacs shares allotment or in 25 lacs shares allotment and respondent NO.6 and his associates were only allotted shares under SS-2 or SS-5. In this regard it is submitted that the share prices of the company were at very low value of around Rs. 4 to 5 in 2002 and 2003. The drafts Scheme was prepared in 2003 by which time it was agreed that the Promoters shall infuse a further sum of

Rs. 250 lacs as unsecured loans for conversion into equity at a face value of Rs.10/- per share though the share price was much below the par value at that time. The petitioner considering the share price at that point of time, choose not to infuse any funds in to the company as loans so as to subscribe to any shares of the Company. Now since the prices of the shares of the 3rd respondent are increasing as a result of the implementation sanctioned scheme of the rehabilitation package, the petitioner is trying to obtain shares for himself. In fact, an alternate Director of the petitioner is in the Board of the Company all through these years and who has full knowledge of all the developments including the proposal for infusion of the unsecured loans and their conversion in to equity shares. In fact his alternate Director has ascertained the interest of the petitioner for subscription of any additional shares and the petitioner has expressed his unwillingness to subscribe any further equity shares at par value when the market value is much less. Thus, the petitioner having chosen not to subscribe for any shares cannot challenge any of the sanctioned schemes of BIFR just because the shares prices have increased.

55. It is also stated that at the meeting of the Board of Directors of the Company held on 28-3-2005 the Board has taken on record the Modified Rehabilitation Scheme (MRS) sanctioned by the BIFR in case No. 91/97 vide order dated 18-10-2004 read with the subsequent order dated 27-1-2005. The Board pursuant to the said sanctioned MRS and the clearance of all the secured creditors had allotted 1,50,000/- Equity Shares of Rs. 10/- each of the Company to M/s Industrial Development Bank of India (IDBI) towards recovery of part of the interest dues to IDBI and 25,00,000 Equity Shares of Rs. 10/- each to Mr. V.N. Sunanda Reddy by conversion of the unsecured loans brought in by him. However, the AAIFR vide interim stay order dated 21-3-2005 and 31-3-2005 has restrained the listing, trading or creation of third party interest on the 25 lacs shares and treating the said allotment as null and void *ab initio*. It is submitted that as the appeal before the Appellate Authority being the first appeal on the sanctioned BIFR scheme and the petitioner having suppressed many facts had obtained *exparte* interim orders against conversion of loans into shares. The AAIFR after verifying the facts in its order dated 28-12-2005 held that the relevant clauses in the sanctioned BIFR Scheme in regard to bringing of the unsecured loans by respondent

No.6 and allotment of shares thereon are in order and there is no justification in the appeal of the petitioner and it was dismissed. Now by the above said order of the AAIFR dated 28-12-2005 dismissing the main appeal, the interim orders dated 21-3-2005 and 31-3-2005 also stand nullified. Hence, the shares already allotted as per the scheme and as per the companies act cannot be treated as invalidated shares.

56. It is also averred in para 19 that the required forms were already filed with ROC on 28-03-2005 and the stock exchanges and public were already informed and have knowledge about the same but for the interim order of the Appellate Authority it was already considered as the share capital of the company but kept in abeyance and it was not illegally allotted. Accordingly, the Board of Directors of the company at the meeting held on 9th January, 2006 have take on record the order of the AAIFR dated 28-12-2005 so as to give effect to the allotment of 25 lacs Shares made on 28-3-2005 pursuant to the above referred MRS of the BIFR dated 18-10-2004 read with the subsequent order dated 27-1-2005. The enhancement of the authorized capital is done as per the sanctioned scheme. The Board of Directors have increased the Authorized Capital of the Company from Rs.8 Crores to Rs. 10.50 croes by passing a resolution at their meeting held on 28-3-2005, complying with the directions of BIFR, the Authorized Capital of the Company has been increased so as to facilitate conversion on unsecured loans of Rs. 250 lacs into equity. The company has filed the necessary forms to ROC with requisite fee on the enhanced authorized capital, the said forms and payment has been accepted by the said authority. Even the Annual Report of the company for year ended 31-3-2005 has shown the Authorised Capital of the company at Rs. 10.50. crores and the allotment of shares to the extent of Rs. 250 lacs is well within the limits.

57. It is further stated that the order passed by AAIFR exercising appellate powers, the act does not contemplate any appeal over the orders of AAIFR and it is stated that the powers of judicial review being limited this is not a case to be interfered with.

58. In the counter affidavit filed by the 4th respondent, the Deputy General Manager of Industrial Development Bank of India Limited certain preliminary objections had been raised and also reply had been given even on merits a specific stand has been taken as present writ petition is misconceived one

and not maintainable in law in view of the express provisions of section 32 of the Act, which stipulates that provisions of SICA and the schemes made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law, except the provisions of the Foreign Exchange Regulation act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976 or in the Memorandum and Articles of Association of the industrial company. The decision of ***V.S.R.Murthy Vs. Engineer in Chief (Irrigation Wing)***[1] wherein it has been held that under the SICA any scheme would be as good as a statute. It is also stated that the Board for Industrial and Financial Reconstruction (BIFR) has itself vide its order dated 27-1-2005, while sanctioning the rehabilitation scheme, expressly stated in para 8 thereof that the provisions of the scheme shall have effect notwithstanding anything contained in any other law (except the provisions of FERA and ULCRA),or in the Memorandum and Articles of Association of the Company or any other instrument having the effect of any law other than SICA. Further it is averred that an objection had been taken that though the affidavit sworn by the General Power of Attorney, in brief thereafter even the proof of attorney had not been filed. In reply to para 3 of the affidavit filed in support of the writ petition, it is stated that the filing of the Appeal before BIFR and petition before the Company Law Board are matter of record and hence do not require any specific reply. It maybe mentioned that BIFR vide its order dated 12-2-2002 had sanctioned a scheme for revival of the respondentNO.3. However, BIFR had subsequently vide its order dated 19-6-2003 declared the sanctioned scheme (SS-02) as failed and came to he conclusion that it is just and equitable that the third respondent be wound up. Further, the BIFR at its next hearing held on 26-9-2003, decided to keep its recommendation winding up in abeyance and directed the RespondentNO.3 to submit a fully tied up proposal Based on the Respondent NO.3's revised proposal this answering Respondent (IDBI) had submitted a draft modified scheme on December, 30,2004 and BIFR had sanctioned the modified rehabilitation scheme vide its order dated January, 27,2005. As per the modified rehabilitation scheme (Clause 6.3 (v) the petitioner herein is required to furnish a personal guarantee in favour of the answering respondent guaranteeing the obligation for the repayment of dues. The appeal filed before AAIFR, the petition filed before Company Law Board and the present writ application are all the attempts of

the Petitioner to get rid of the personal obligation cast upon him to make payment to the answering respondent if the respondent No.3 defaulted in making payment to the answering Respondent. It maybe mentioned that this answering respondent had made huge sacrifies to the extent of Rs.3.62 crores under the rehabilitation schemes sanctioned by BIFR. Under the rehabilitation scheme respondent No.3 has agreed for the conversion of rs.15lakh of its dues in to 1,50,000 equity shares of Rs.10 each in favour of this answering respondent with buy back arrangement at the discretion of this answering respondent. It is submitted that the contention of the petitioner that since the rehabilitation scheme dated 12-2-2002 was declared as failed by order dated 19-6-2003, the allotment of shares dated 25-4-2003 should not have any legal validity is denied as the scheme sanctioned by BIFR on January, 27,2005 is a modified sanctioned scheme.

59. It is further averred that as per Para 6.3 (v) (a @ b) of the sanctioned scheme, the promoters have to bring in Rs.250 lakh unsecured loans during the FY 2003-04 and 2004-05 and agree to convert the above loan amount in to equity. As per Paras 6.3 (V) (f & g) of the BIFR modified sanctioned scheme the promoters have to give guarantee to IDBI for repayment of its dues (150000 equity shares were allotted to IDBI by the Respondent No.3 as per Paras 6.3 (1) © of the sanctioned scheme towards unpaid interest of Rs. 15 lakh) and also to pledge 25 lakh equity shares with IDBI in demat form.

60. Further in reply to para 4 in para 5 of respondent NO.4 that the contention of the petitioner that Para 6.3 (V) (a,b,f,g and j) of the modified sanctioned scheme of BIFR are objectionable to him and indicated that the scheme had been sanctioned by BIFR without his notice is not correct. It is pertinent to mention here that BIFR prepared modified draft rehabilitation scheme (MDRS) for circulation to all concerned agencies for their consent/comments as per section 19(1) of SICA and gist of which was also published in two leading news papers inviting objections/suggestions if any. After this BIFR convene hearing on October 18,2004 to hear objections/suggestions. But no objections were forthcoming from the petitioner.

61. Further in reply 5 in para 6 it is stated that the first respondent vide its orders dated 28-12-2005 has refused to decide on the correctness of the allocation of shares under SS-02 or SS-05 and refused to interfere with the

scheme dated 27-01-2005, issued on 01-02-2005. It is pertinent to mention here that as per BIFR order, the provisions contained in the scheme shall have effect notwithstanding anything inconsistent therewith contained in any other law (except the provisions of the FERA Act 1973 and the Urban Land (Ceiling and Regulation) Act, 1972 for the time being in force or in the Memorandum and Articles of Association of the SSOL (respondent-3) or any other instrument having effect by virtue of any law other than the SICA Act, 1985.

62. The respective stands taken by the parties had been specified above.

63. The present writ is a writ of certiorari. The chronological events in brief are that in the year 1990 S.S.Organics Private Limited was incorporated. In 1993 S.S.Organics became a public Limited company. In 1996 the company went into losses of 632 lakhs and net worth of the company was eroded (Rs. 55 lakhs). On 1-1-1997, 6th respondent-Mr. Sunandha Reddy was made the Managing Director of the company. All the promoter directors resigned from the company due to financial strain. There were lots of statutory dues, civil and criminal cases pending against the company. Outstanding liability was around Rs. 10 crores. On 8-8-1997 a reference was made to BIFR and the same was registered as case No. 91 of 1997. On 15-9-1997 3rd respondent was declared as a sick company by the BIFR. On 12-2-2002 BIFR sanctioned scheme of rehabilitation (SS-02). Rs.200 lakhs to be brought in by the way of unsecured loan by the promoters. The petitioner B. Subba Reddy was offered 5 lakh shares at Rs.10/- which he declined to apply. The 6th respondent subscribed for 15 lakh shares by bringing in 1.5 crores as an unsecured loan to the company. On 26-2-2002 the petitioner participated in the board meeting of 3rd respondent wherein the allotment of 200 lakhs was discussed and the petitioner declined to subscribe as the share value was Rs. 5.50 ps and as per scheme it was Rs. 10/- per share. On 25-4-2003 in accordance with the Companies Act the 3rd respondent allotted 1.5 lakh shares to the 6th respondent. On 26-9-2003 IDBI (O.A.) informed BIFR and IDBI and SBI approved the OTS of the 6th respondent. BIFR was of the view that Rs. 250 lakhs should be brought in to the company as unsecured loan. On 27-1-2005 BIFR after following due procedures as laid down under Section 18(5), (6),(7), (8), (9) sanctioned a modified scheme of rehabilitation (

SS.05) to the 3rd respondent. Promoters to bring in Rs. 250 lakhs as unsecured loan. Earlier scheme dated 2002 promoters had already converted 200 lakhs of unsecured. Earlier scheme dated 2002 promoters had already converted 200 lakhs of unsecured loan into equity on 24-5-2003. On 27-1-2005 the petitioner filed appeal against the order of the BIFR. The petitioner filed CP No.22/2005 against 55 respondents challenging the allotment of 20 lakh shares. On 10-10-2005 CLB in C.A.No.54/05 in C.P.No.22 of 2005 passed an order observing that it would entertain the petition to the extent of mismanagement oppression and statutory violations under Section 397 and 398 and the allotment of 20 lakh shares can be raised before the AAIFR. On 28-12-2005 AAIFR while dealing with clause 6.3 (v) of the order dated 27-1-2005 of the BIFR. If incase the allotment of shares as per the Companies Act under SS.02 or SS.05 the petitioner gets an order in his favour he is at liberty to approach to approach BIFR.

64. The fact that certain parallel proceedings being fought between the parties is not in serious controversy. Strong reliance was placed on the decision of ***Surya Dev Rai Vs. Ram Chander Rai***[2] and also in ***Ranjeet Singh Vs. Ravi Prakash***[3] relying upon ***Surya Dev Rai's case*** , the Apex Court at para 4 observed :

> "Feeling aggrieved by the judgment of the appellate Court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the appellate Court and restored that of the trial Court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate Court. Though not specifically stated, the phraseology employed by the High Court in its judgment goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the appellate Court. In Surya Dev Rai V. Ram Chander Rao (2003)6 SCC 675) this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should b e an error which is self evident. An error which needs to be established by lengthy and complicated arguments or by

indulging in a long drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appellate Court which was not permissible for it to do under Article 226 or Article 227 of the Constitution".

65. While dealing with scope and ambit of writ of mandamus and writ of certiorari the Division Bench of this Court in ***Chief Executive Officer, Zilla Parishad, Mahabubnagar District Vs. C.V.Narasimha Rao***[4] observed at para 6:

" Mandamus is a command issued to direct any person, Government, Corporation, inferior Court to which a particular specified thing which appertains to the Office and which is in the nature of a public duty. It may be true that when the Tribunal declined to consider the aspects, which the Tribunal is bound to consider according to law, a Writ of Mandamus may be issued commanding the Tribunal to proceed according to law.

In State of Bihar Vs. Ganguly (AIR 1958 SC 1018) it was held that Mandamus is available against any public authority including administrative and local bodies, whereas prohibition and certiorari will lie only against judicial and quasi-judicial authorities. A writ of Certiorari maybe issued whenever anybody of persons (i) having legal authority, (ii) to determine a questions affecting rights of subjects, (iii) having the duty to act judicially, and (iv) act in excess of their legal authority. The under noted decisions of the Apex Court may usefully be referred to in this context.

Province of Bombay Vs. Khusaldas ((1950)SCR 621) Basappa Vs. Nagappa (AIR 1954 SC 440) and Hari Vishnu Vs. Ahmad (AIR 1955 SC 233)

It is needless to say that the issuance of either Writ of

> Mandamus or Writ of Certiorari is discretionary. The object of Article 226 of the Constitution of India ordinarily is the enforcement and not establishment of a right or title. The under noted decisions of the Apex Court maybe glanced at :
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> Thakur Amar Singh Vs. State of Rajasthan (AIR 1955 SC 504) and Union of India Vs. Verma (AIR 1957 SC 882).
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> The general principles relating to the issuance of Writs under Article 226 of the Constitution of India and the distinguishing features of Writ of Mandamus and Writ of Certiorari need not detain this Court any further but however it is suffice to point out that it would have been appropriate to pray for a Writ of Certiorari instead of praying for a Writ of Mandamus in W.P.No. 827/2005".

66. The Act referred to supra is an Act to make in the public interest Special Provisions with a view to secure the bar if sick and potential sick company owning Industrial undertaking speed determination by Board of Experts of the preventive memorative remedial and other measured which need to be taken in respect of less companies an enforcement and connected with incidental thereto.

67. Section 18 of the Act deals with preparation and sanction of the scheme. Section 18 sub-Section 5 reads as under:

> "5. The Board may on the recommendations of the operating agency or otherwise review any sanctioned scheme and make such modifications as it may deem fit or maybe order in writing direct any operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh scheme providing for such measures as the operating agency may consider necessary".

68. Section 25 of the Act deals with the appeal and the said provision reads as under:

> "Section 25. Appeal: 1) Any person aggrieved by an order of the Board made under this Act may, within forty five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority.
>
> Provided that the Appellate Authority may entertain any appeal after the said period of forty five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing

the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit confirm, modify or set aside the order appealed against (or remand the matter to the Board for fresh consideration).

69. Certain submissions were made on the issues "remand the matter to the Board for fresh consideration". A request was made it is a fit matter where the matter may have to be remitted even to the Primary Authority in the peculiar facts and circumstances of the case.

70. Section 32 deals with effect of the act on other laws, and the said provision reads as under :

"Sub-Section (1) The provisions of this Act and of any rules or schemes made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law, except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) , for the time being in force or in the memorandum or articles of association of an industrial Company or in any other instrument having effect by virtue of any law other than this Act.

(2) Where there has been, under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions under section 72A of the Income Tax Act, 1961 (43 of 1961) shall, subject to the modifications that the power of the Central Government under that section maybe exercised by the Board without any recommendation by the specified authority referred to in that section apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company".

71. In ***Union of India Vs. Krishna Mills Ltd.,*** [5] it was held that the present Act being a Special statute in relation to sick industrial companies, it will prevail over the general provisions of the Companies Act, 1956. Particularly, the *non obstante* clause in Sections 22 and 32 of the present Act will prevail as against the *non obstante* clause in Section 529A of the Companies Act, because the present Act is a special statute and is subsequent in point of time.

72. In ***Bhoruka Steel Limited Vs. Fairgrowth Financial Services Ltd.,*** [6]

that where there are two special statutes which contain non *obstante* clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non *obstante* clause. If the Legislature still confers the later enactment with a non *obstante* clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.

73. Regulations 27 to 33 also had been relied upon. Regulation 29 reads:

> "The Board shall publish or cause to be published short particulars concerning the draft scheme, by way of notification, in such daily newspapers and periodicals, as it may consider necessary, inviting suggestions and objections regarding the draft scheme, within such time, as may be mentioned in the notification, from the shareholders, creditors and employees of the sick industrial company, the transferee company as well as any other company concerned in the amalgamation.".
>
> Regulation 30 reads as under:
>
> "The Board shall consider the suggestions and objections received from the sick industrial company, the operating agency, or, as the case may be, from the transferee company and any other industrial company concerned in amalgamation and from any shareholder, creditor, or employee, of such companies".
>
> Regulation 28 specified as under:
>
> The Board, after considering the scheme prepared by the operating agency and report thereon, if any, of the Secretary, submitted in pursuance of an order made by the Board, on the point as to whether the scheme has been prepared in accordance with the guidelines specified in the order of the Board made under sub-section (3) of Section 17, shall prepare a draft scheme and cause a copy of the same to be sent to the sick industrial company and the operating agency".

74. Regulations 31,32 and 33 also deal with the procedure to be followed for preparation and sanction of the scheme under Section 18 of the Act. Regulation 32 specified that the Board may, thereafter, by order in writing sanction the scheme, with or without any modification, in terms of sub-section (4) of Section 18.

75. Section 18(4) Guiding principle for formulating scheme.

76. As stated earlier, BIFR has wide or large powers to decide on contents of the scheme and it can accordingly issue guidelines to the operating agency. But, it is difficult to accept this proposition without a qualification. The scope of Section 18 seems to be limited to such acts, deeds or things as are necessary to make the sick company viable. That is to say, the BIFR may not exercise any power of discretion which is not necessary for the purpose of viability of the sick company. To illustrate this point, the scheme can, in terms of clause (a) of Section 18(2), provide for shifting the registered office of the sick company if it is so considered necessary by the BIFR. But the clause would not normally justify shifting of the registered office of the transferee company.

77. Regulation 33 specified for modification of the sanctioned scheme or preparation of a fresh scheme in pursuance of the order of the Board under sub-section (5) of section 18, the procedure prescribed in regulations 28,29,31 land 32 of these regulations shall, as far as may be , be followed, as it applies to a scheme prepared under regulation 28.

78. Certain submissions were made that certain procedure had not been followed. This Court has given anxious consideration to the relevant material placed before this Court, the order impugned in the writ petition, the order made by the first respondent-appelalte authority and also the Primary Authority. This Court is satisfied that the writ petitioner had knowledge of the proceedings and had been fighting the litigations by instituting several proceedings. On a careful scrutiny of the material placed before this Court, this Court is of the considered opinion that the ground raised relating to the procedural lapses or infirmities cannot be a sustainable ground. However, strong reliance has been placed on ***V.S.R.Murthy Vs. Engineer-in-Chief (irrigation Wing)*** [7] wherein a full Bench of Andhra Pradesh High Court observed in para 10 and 13 as under:

> "10. Sick Industrial Companies (Special Provisions) Act is a special Act. The objects and reasons of the said enactment canbe spelt out which are to rehabilitate, revive and financial restructuring of the sick industries. Section 18 empowers BIFR to frame a scheme in respect of sick industries for transfer, amalgamate, winding up, revival of sick industry. The provisions of the Act have overriding effecting view of Section 32 of the Act.

13. Under the Sick Industries (Special Provisions) Amendment Act, 1993 any scheme would be as good as a Statute. Such Scheme is statutory in nature in view of the provisions of Section 32 of the Act. Further there is also bar of jurisdiction of a Court under Section 26 of the Act, in addition to overriding effect created under Section 32 of the Act. In view of these provisions, the Scheme is statutory in nature and as such, any such scheme approved under the said act which is a Central Act cannot be defeated by a State Legislation. In case of repugnancy between Central and State Acts, the Central Act alone prevails."

79. In ***International Finance Corporation Vs. Bihar State Industrial Development Corporation***[8] it was observed by the Apex Court in para 12 as under:

"12. We have heard the matter at length. We are of the view that repeated interference in the proceedings of BIFR has benefited nobody except the persons who continue in the management of the Company. The secured creditors have certainly been deprived of their normal rights to recover their dues by reason of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (herein after referred to as 'The Act"). While they are hamstrung by the rigors of those provisions, the present management of the Company continued to enjoy the protection of the umbrella provided by Section 22 of the Act. IN the circumstances, it is of utmost importance that the courts do not lengthen the proceedings before BIFR unless such interference is absolutely imperative for well defined reasons in the interest of the creditors as a whole and in the interest of the workers and the sick industry itself, but not in the interest of a particular management. It must be kept in mind that BIFR has been statutorily conferred with special powers to adjudicate upon the question of the revival of a company and it has the necessary expertise at its command for doing so. If the Board has taken steps in accordance with commercially advisable and legally sustainable principles after considering the view of the parties likely to be affected and in a manner which may not be said to be irrational or perverse, the Court should not interfere in the process. That was why this Court had, as far back as in 2001 directed BIFR to dispose of the matter expeditiously before it. Clearly BIFR, despite that mandate by this Court has not been able to comply and the only reason was the repeated litigation."

80. In ***Bombay Dyeing and Manufacturing Company Limited Vs. Bombay Environmental Action Group***[9], the Apex Court observed at paras 2, 314, 325 as under:

> "2. Whether any synthesis between environmental aspects and building regulations vis-à-vis the scheme floated by the Board of Industrial and Financial Reconstruction (for short "BIFR") in terms of the provision of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA" herein is possible is the core question involved in these appeals.
>
> '314. BIFR exercises its jurisdiction under a statute; the objects where of are distinct and different from a town planning scheme. BIFR is not a town planner. It is not a development authority. It has nothing to do with the town planning or development scheme or maintenance of ecological balance. BIFR was concerned only with the manner in which sick industrial undertaking should be made to revive. Before passing the said order, it was required to hear all concerned, namely, the management, the workmen, the financial institutions, banks, etc., as also the operating agencies. It did so.
>
> '325. It is not in dispute that NTC was a sick company. As a sick company, it might not have in a position to reopen any close mill at all. Reference to BIFR in terms of Section 16 of the Act evidently was made for the aforementioned purpose. If the schemes sanctioned by BIFR are given effect to, at least some of the NTC mills indisputably would be revived. SICA, we have noticed hereinbefore, is a special statute. It was enacted by the Parliament only with a view to meet the contingencies contemplated therein. The validity or otherwise of the reference made by NTC to BIFR is not in question. The writ petitioners did not question the validity of the statutory schemes. No material has been brought before us to show even the workmen were in any way aggrieved thereby. Had they been so, they could have preferred an appeal before the BIFR. Even there does not exist any material to show that at any point of time they had approached the High Court in judicial review. The workmen were parties in the proceedings before BIFR. Presumably BIFR made the said schemes after hearing of parties concerned including the workmen".

81. Reliance was placed on several decisions to convince this Court that this is a fit matter to be interfered with while exercising the power of judicial

review under Article 226 of the Constitution of India. In ***Chief Executive Officer, Zilla Parishad, Mahabubnagar District's case*** the Division Bench of this Court observed at para 6 and 10 as under:

> "6. The Chief Executive Officer, Zilla Parishad, Mahaboobnagar, filed W.P.No.827/2005 praying for an order or direction, more particulary, in the nature of Writ of Mandamus, to call for records relating to and connected with the proceedings of the first respondent, in proceedings NO. V2/850/98, dated 7-4-2004, and to set aside the same and pass such other suitable orders. The impugned order was made by the Commissioner of Appeals, the Chief Commissioner of Land Administration, A.P. Hyderabad. Writ of Mandamus literally means a command and it differs from the Writs of Prohibition or Certiorari in its demand for some activity on the part of the body or person to whom it is addressed. The Mandamus is a command issued to direct any person,
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> Government, Corporation, inferior Court to which a particular specified thing which appertains to the Office and which is in the nature of a public duty. It may be true that when the Tribunal declined to consider the aspects, which the Tribunal is bound to consider according to law, a Writ of Mandamus may be issued commanding the Tribunal to proceed according to law.
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> In State of Bihar Vs. Ganguly (AIR 1958 SC 1018) it was held that Mandamus is available against any public authority including administrative and local bodies, whereas prohibition and certiorari will lie only against judicial and quasi-judicial authorities. A writ of Certiorari maybe issued whenever anybody of persons (i) having legal authority, (ii) to determine a questions affecting rights of subjects, (iii) having the duty to act judicially, and (iv) act in excess of their legal authority. The under noted decisions of the Apex Court may usefully be referred to in this context.
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> Province of Bombay Vs. Khusaldas ((1950)SCR 621) Basappa Vs. Nagappa (AIR 1954 SC 440) and Hari Vishnu Vs. Ahmad (AIR 1955 SC 233)
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> It is needless to say that the issuance of either Writ of Mandamus or Writ of Certiorari is discretionary. The object of Article 226 of the Constitution of India ordinarily is the enforcement and not establishment of a right or title. The under noted decisions of the Apex Court maybe glanced at :
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> Thakur Amar Singh Vs. State of Rajasthan (AIR 1955

SC 504) and Union of India Vs. Verma (AIR 1957 SC 882).

The general principles relating to the issuance of Writs under Article 226 of the Constitution of India and the distinguishing features of Writ of Mandamus and Writ of Certiorari need not detain this Court any further but however it is suffice to point out that it would have been appropriate to pray for a Writ of Certiorari instead of praying for a Writ of Mandamus in W.P.No. 827/2005.

10. It is clear from the facts that the litigation is a long dawn litigation and the self same Bench while disposing of C.R.P. No. 5613/2000 and batch recorded elaborate reasons. It is not in serious controversy that the findings recorded and the decrees made by the competent civil Court had attained finality. Even from the respective stands taken by the parties, in the civil proceedings, the plea of joint possession virtually had been accepted and on the strength of the same, the preliminary decree and the final decree also had been made and this question cannot be re-agitated again between the parties and it is needless to say that these parties being parties even to the civil proceedings, the findings recorded therein would operate as res judicate between these parties. Be that as it may, the scope of controversy in the present Writ Petition is the validity of the impugned order, the question of want of jurisdiction to entertain a dispute of this nature in-relation to non-agricultural property is being canvassed. On a careful scrutiny of the grounds of appeal and also the written arguments, this ground was not raised at all. It is needless to say that the written arguments cannot be equated with that of a plea being raised in this regard. Though certain submissions were made that this is a question of law touching the jurisdiction of the concerned Revenue Court in entertaining a dispute which would touch the root of the matter on admitted facts, this Court is of the considered opinion that the interpretation that is being given to the personal cultivation, cultivable land, agricultural land, non-agricultural user, by giving strict and literal interpretation, cannot be accepted taking into consideration the nature, scope and ambit of the Act and the different provisions of the act. Even otherwise, this question which is being canvassed for the first time before the Writ Court, does not deserve serious consideration at the hands of this Court, in view of the fact that this writ remedy itself being a discretionary remedy, it is suffice to state that there are no bona fides

on the part of the writ petitioner and this Court is thoroughly satisfied that the first respondent was well justified in dismissing the appeal both on the ground of inordinate delay and also on merits in the light of the series of events inclusive of the different civil Proceedings especially in the light of the judgment delivered by this Court in C.R.P.No.5613/2000 and batch. In the light of the views expressed above, the question whether State of Maharashtra's case (referred 12 supra) is direct on the point and Lokraj's case (referred 11 supra) is not direct on the point and the other Full Bench decision in M/s Ushodaya Enterprises Limited's case (referred 13 supra) to the effect that the later decision need not be followed, these aspects need not be considered in elaboration. In view of the settled principles in issuing the discretionary writs of either a writ of mandamus or a Writ of Certiorari and also the limitations of exercise of judicial review to be exercised by this Court under Article 226 of the Constitution of India, this Court is of the considered opinion that this is not a fit matter to be interfered with. Except the aforesaid contentions, none other contentions had been canvassed before this Court and hence this Court is of the considered opinion that the Writ petition is devoid of merit and accordingly the same shall stand dismissed with costs."

82. In ***Jt. Registrar of Cooperative Societies Madras Vs. P.S.Rajagopal Naidu***[10] the Apex Court observed in para 10 as under:

"10. We have been taken through the material parts of the orders of the Registrar and the joint Registrar and we do not find any such infirmities in them which would justify interference by the High Court under Article 226 of the Constitution. The High Court could not act as an Appellate Court and reappraise and re-examine the relevant facts and circumstances which led to the making of the orders of suppression as if the matter before it had been brought by way of appeal. The limits of the jurisdiction of the High Court under Article 226 when a writ in the nature of certiorari is to be issued are well known and well settled by now and it is pointless to re-state the grounds on which any such writ or direction can be issued. We are satisfied that there was no justification whatsoever for quashing the orders of the Joint Registrar and that of the Registrar in appeal. The appeals are consequently allowed with costs and the

judgment of the High Court is set aside. The writ petitions are ordered to be dismissed. On hearing fee."

83. In ***Sarpanch,Lonand Grampanchayath Vs. Ramgiri Gosavi*** [11], it was held at paras 5 and 6:

5. No appeal lies from an order of the Authority under S 20. But the High Court is vested with the power of' judicial superintendence over the tribunal under Art 227 of the Constitution. This power is not greater than the power under Art. 226 and is limited to seeing that the tribunal functions within the limits of its authority, see Nagendra Nath Bora v Commissioner of Hills Division and Appeals, Assam, 1958 SCR 1240 at: (AIR 1958 SC 398 at p. 413). The High Court will not review the discretion of the Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires. In Sitaram Ramcharan v. M. N. Nagarshana, l960-1 SCR 875 at p. 884 : (AIR 1960 SC 260 at p. 263) this Court held that a finding of fact by the authority under the similarly worded second proviso to S. 15 (2) of the Payment of Wages Act 1936 could not be challenged in a petition under Art. 227. The High Court may refuse to interfere under Art. 227 unless there is grave miscarriage of justice.

6. In the present case the Authority found that since January 2, 1961 the employees were making complaints to the Government authorities regarding non-payment of overtime wages. On January 2, 1961 the employees wrote to the Inspector, Minimum Wages, Government labour office, Sangli, complaining of overtime work and asking for directions on the appellant to comply with the provisions of the Minimum Wages Act. A reminder was sent to him on January 11, 1961. On January 18, l961 the Inspector wrote that the matter was being followed up. On April 22, l961 the Inspector visited Lonand and directed the appellant to comply with the provisions of the Minimum Wages Act and the rules made thereunder. On April 25, 1961 the Inspector communicated this direction to the employees. On January 1, 1962 the employees lodged a complaint of overtime work with the Commissioner, Poona Division, and asked for a direction for payment of the arrears of overtime wages. On January 3, l962 the Commissioner wrote to the employees that the matter was receiving attention and their application had been sent to the Collector of Satara for disposal. Later in August / September 1962 and early

1963 the Block Development Officer came to Lonand and made inquiries. The revenue officers appointed as inspectors under the Government notification dated May 4, 1955 are under the administrative control of Commissioner and Collector. The inspectors have no power to give relief under S. 20 (2) but they have large powers of supervision and control under S. 19 of the Act. The employees relied upon the assurances of the Inspectors and their superiors that proper steps would be taken for the remedy of their grievances and relying upon those assurances, they refrained from taking steps under S. 20 (2) of the Minimum Wages Act. Having regard to all the circumstances of the case, the employees were not guilty of inaction or negligence and the entire delay in presenting the application was due to their honest though mistaken belief that the relief of overtime wages would be granted to them through the intervention of the inspectors and their superior officers. It is not shown that in condoning the delay the Authority acted arbitrarily or capriciously or in excess of its jurisdiction or that it committed any error apparent on the face of the record. In the application under S. 20 (2), some of the employees claimed overtime wages for periods prior to January 1, 1961. The Authority declined to condone the delay in respect of claims for the period prior to January 1, 1961. On a careful consideration of the relevant materials the Authority condoned the delay in respect of claims subsequent to January 1, 1961 only. The Court cannot interfere merely because it might take a different view of the facts and exercise the discretion differently. It is not shown that the impugned order led to grave miscarriage of justice. The High Court refused to interfere under Art. 227. We think that this is not a fit case for interference by us under Art. 136.

84. In ***State of West Bengal Vs. AtulKrishna Shaw***[12] it was observed at para-7.

7. Admittedly the High Court did not go into any of the questions raised by the appellant in the writ petition. It summarily dismissed the writ petition. Therefore, what we have to read is only the orders of the Appellate Tribunal and the Asstt. Settlement Officer - the primary authority together with the record of evidence. Counsel took us through the evidence to show that the findings recorded by the appellate Judge are based on either no evidence or surmises and conjectures. We have given our anxious consideration to the respective contentions and considered the evidence on record once again. It is

indisputably true that it is a quasi-judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice.

85. In ***Ashok kumar Vs. Sita Ram***[13]**,** it was observed at paras 10, 17 and 18.

"10. The position is too well settled to admit of any controversy that the finding of fact recorded by the final court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the material on record.

17. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction in a matter like the present case where orders passed by the Statutory Authority vested with power to act quasi judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to

interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another Appellate Court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.

18. On consideration of the entire matter we are satisfied that the High Court erred in interfering with the judgment/order passed by the Appellate Authority. Accordingly, the appeal is allowed, the judgment/order of the High Court dated 8-12-1999 in Writ Petition No. 92(R/C) of 1992 is set aside and the order of the Appellate Authority i.e. Vth Additional District Judge, Barabanki dated 12-5-1992 in Rent Control Appeal No. 1 of 1991 is confirmed. The parties will bear their respective costs".

86. In ***Ranjeet Singh's case,*** it was observed by the Apex Court in para 4 as under:

"Feeling aggrieved by the judgment of the appellate Court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Art. 226 and alternatively under Art. 227 of the Constitution. It was heard by a learned single Judge of the High Court. The High Court has set aside the judgment of the appellate Court and restored that of the trial Court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate Court. Though not specifically stated, the phraseology employed by the High Court in its judgment, goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the appellate Court. In Surya Dev Rai v. Ram Chander Rai and others (2003) 6 SCC 675, this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging into a long drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to

> the exercise of supervisory jurisdiction of the High Court under Art. 227 of the Constitution also, it has been held in Surya Dev Rai (supra) that the jurisdiction was not available to be exercised for indulging into re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that - "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appellate Court which was not permissible for it to do under Art. 226 or Art. 227 of the Constitution. AIR 2003 SC 3044 : 2003 AIR SCW 3872 : 2003 All LJ 2057"

87. The principles relating to the exercise of jurisdiction under Article 226 of the Constitution of India and exercise of powers and limitations in relation to judicial review being well settled, these aspects need not detain this Court any longer. The principal question on which much arguments had been advanced is that the first respondent-appellate authority had not discharged its duty as appellate authority since the appellate authority had not considered all the grounds or all the objections and a careful scrutiny and analysis of the respective stands taken by the parties and also the nature of the grounds raised by the Writ Petitioner and further taking into consideration the conduct of the parties and further in the light of the limitations imposed on this Court in exercise of certiorari jurisdiction when an order of appellate authority is being called in question by way of writ petition and also in the light of the reasons recorded by the appellate authority, the first respondent as specified supra, this Court is satisfied that this is not a fit case to be interfered with while exercising the powers under Article 226 of the Constitution of India. It is need less to say that the writ petitioner is at liberty to agitate these questions before the appropriate Forum if the writ petitioner is so advised. The first respondent-appellate authority acted within its bounds and hence such order need no disturb at the hands of this Court nor the said order requires an order of remit to be made by this Court in the facts and circumstances of the case.

88. Accordingly, subject to the above observations, the writ petition is hereby dismissed. In view of the relationship between the writ petitioner and the 6th respondent the main contesting parties in the present litigation though other parties are formally contesting, the parties to bear their own costs.

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Justice P.S.Narayana

6th November, 2007.
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THE HONOURABLE SRI JUSTICE P.S.NARAYANA

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NOVEMBER, 2007

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